

REMARKS

Claims 37-52 remain pending in the present application. Claims 1-36 have been canceled. Claims 37-52 are new. Basis for the amendments can be found throughout the specification, claims and drawings as originally filed.

Similar claims to the new claims in this application were rejected by the Examiner in the parent application under 35 U.S.C. § 103 as being unpatentable over Kumasaka et al. (4,799,416) in view of Cotton et al. (4,892,022). The Examiner, in making this rejection is starting with Kumasaka which has a fixed guard and a movable guard but does not have an arbor cover. To supply the arbor cover, the Examiner goes to Cotton et al. which only has a fixed guard. It is Applicant's position that this is an improper application of 35 U.S.C. § 103.

In a decision of the C.A.F.C., Panduit Corp. v. Dennison Manufacturing Co., 810 F.2d 1561, 1 U.S.P.Q. 2d 1593 (Fed. Cir. 1987), Chief Judge Markey offered the opinion that hindsight reconstruction from isolated elements in a number of prior art references in order to arrive at the claimed combination is contrary to the purpose of the patent laws.

"Virtually all inventions are necessarily combinations of old elements. The notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily destroy virtually all patents and cannot be the law under the statute, Section 103." 810 F.2d at 1575, 1 U.S.P.Q. 2d at 1603.

The issues regarding the incorporation of an arbor cover on a guard assembly having both a fixed and a movable guard are not the same as those encountered when incorporating an arbor cover on a guard assembly with only a fixed guard. It appears that the Examiner utilized Cotton et al. for the arbor cover utilized Cotton et al. for the arbor cover because he was unable to identify a reference which shows a fixed guard, a movable guard and an arbor cover. It is just this type of combining of references that the Court in the Panduit decision found to be impermissible. Unless the Examiner is able to identify a reference with the fixed guard, the movable guard and the arbor cover, it is Applicant's position that the Panduit decision supports the patentability of the pending claims.

In light of the above amendments and remarks, Applicant would submit that all Claims are in a condition for allowance and thus Applicant requests that the Examiner pass the case to issue at his earliest possible convenience.

Should the Examiner have any questions regarding the present amendment he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

October 27, 2000
Date


Michael J. Schmidt
Reg. No. 34007

P.O. Box 828
Bloomfield Hills, MI 48303
(248) 641-1600

Attorney Docket No. 0275A0168DVB

002207 02666960